

## **IX. Services Fraud**

### **A. Obtaining Property by False Pretenses**

**If any person shall knowingly and designedly by means of any kind of false pretense whatsoever, whether the false pretense is of a past or subsisting fact or of a future fulfillment or event, obtain or attempt to obtain from any person within this State any money, goods, property, services, chose in action, or other thing of value with intent to cheat or defraud any person of such money, goods, property, services, chose in action or other thing of value, such person shall be guilty of a felony: Provided, that if, on the trial of anyone indicted for such crime, it shall be proved that he obtained the property in such manner as to amount to larceny or embezzlement, the jury shall have submitted to them such other felony proved; and no person tried for such felony shall be liable to be afterwards prosecuted for larceny or embezzlement upon the same facts: Provided, further, that it shall be sufficient in any indictment for obtaining or attempting to obtain any such money, goods, property, services, chose in action, or other thing of value by false pretenses to allege that the party accused did the act with intent to defraud, without alleging an intent to defraud any particular person, and without alleging any ownership of the money, goods, property, services, chose in action or other thing of value; and upon the trial of any such indictment, it shall not be necessary to prove either an intent to defraud any particular person or that the person to whom the false pretense was made was the person defrauded, but it shall be sufficient to allege and prove that the party accused made the false pretense charged with an intent to defraud. If the value of the money, goods, property, services, chose in action, or other thing of value is one hundred thousand dollars (\$100,000) or more, a violation of this section is a Class C felony. If the value of the money, goods, property, services, chose in action, or other thing of value is less than one hundred thousand dollars (\$100,000), a violation of this section is a Class H felony.**

**Evidence of non-fulfillment of a contract obligation standing alone shall not establish the essential element of intent to defraud.**

**For purposes of this section, "person" means person, association, consortium, corporation, body politic, partnership, or other group, entity, or organization. (33 Hen. VIII, c. 1, ss. 1, 2; 30 Geo. II, c. 24, s. 1; 1811, c. 814, s. 2, P.R.; R.C., c. 34, s. 67; Code, s. 1025; Rev., s. 3432; C.S., s. 4277; 1975, c. 783; 1979, c. 760, s. 5; 1979, 2nd Sess., c. 1316, s. 47; 1981, c. 63, s. 1; c. 179, s. 14; 1997-443, s. 19.25(I).) [NCGS 14-100]**

In situations where there is evidence that leads an agency to believe that an individual has been fraudulent in providing information used to establish eligibility for the receipt of services, the agency may take steps to seek recovery for the cost of the services provided to the individual.

The Attorney General has given the following guidance that may be helpful. Elements of civil fraud, for purposes of the services program are:

The material misrepresentation or concealment of a past or existing fact; which representation is definite and specific; made with knowledge that is false; or made recklessly and as a positive assertion, without knowledge of its truth; or which concealment is done with knowledge that there is an affirmative duty to reveal; and with intent that the misrepresentation or concealment is reasonably acted upon to his/her detriment by the person (agency) sought to be defrauded.

Consultation among the agency director, agency attorney, and district attorney may be helpful in establishing a clear understanding of what constitutes fraud in the services program; how to evaluate evidence and make recommendations; and ensure that proceedings are handled in an equitable manner.

When there is evidence of fraud, the agency director and the county board of social services would examine the situation and, based on evaluation of the evidence, determine the manner in which to proceed.

Recommendations for action should be made in consultation with the agency attorney, particularly in determining the most appropriate means by which recovery is to be sought.

Decisions should be made on an equitable basis.

Discretion should be exercised in making a decision to seek prosecution under criminal statutes as the means to recover.

The agency may seek voluntary repayment from the client; or may seek recovery through court action, under civil or criminal proceedings, or both.

Both civil and criminal proceedings can be initiated; however, the agency can collect repayment only once.